Questions for the Prime Minister on the Queen's Chain Provisions
in the Conservation Law Reform Bill
(supplied to Jim Anderton MP)

The Line of Attack

1. On 28 November 1989 Geoffrey Palmer stated that "the Government has no intention of restricting the public's right of access to the Queen's Chain, that Government wants the Queen's Chain, and that the Conservation Law Reform Bill is meant to strengthen it's protection, not the reverse."

2. The reported-back version of the Bill does not do this.

Question 1

RESTRICTIONS ON PUBLIC ACCESS

Background

Thousands of kilometres of Queen's Chain created under section 58 of the Land Act 1948 will, on passage of the Conservation Law Reform Bill, be absorbed into the Conservation Act 1987 to become 'marginal strips'.

Under the Land Act there are no powers of closure to public access by the Crown or anyone else —these 20 metre wide strips of Crown land exist by virtue of their purpose of providing public access to waterways. The public therefore has an unqualified right of access. This right has never before been challenged during the last 140 years, however Government has recently argued that no right of access exists; there is only access at the pleasure of the Commissioner of Crown Lands. The PLC has obtained legal advice which supports the view that public access along these strips is a right and not a mere privilege. The PLC believes that Government has advanced its argument solely to portray its proposals in the Bill as a strengthening of public rights. Even if the Government view were legally correct, it flies in the face of a universal perception that rights of use exist, and the whole history of customary access and use.

There are currently powers of closure by the Minister of Conservation over marginal strips. This is confined to reasons of public safety or emergency, or if in accordance with a management plan. These powers have never been used and in any case there is only one known marginal strip established. Closure powers were established before the SOE's began clamouring for powers to prohibit or control public access. The powers were not previously perceived to be a problem because, before Government embarked on its massive land/asset sale programme, there were no pressures for such powers to be used.

Powers of closure in emergency (police) or fire situations exist under separate legislation. It is not necessary or desirable for the Minister of Conservation or DOC officials to also have such powers —eventually they will be abused to satisfy SOE and adjoining land owner interests.

The reported-back version of the Bill provides for closures of unspecified duration at the Minister's instigation for reasons of "public safety or emergency" [S 13 (c)], or at the request of a manager "where any operation proposed on the strip will significantly affect public safety or where closure is necessary in any case to protect any asset." [S. 24G (5A)].

The prevailing right of public access at all times is therefore being replaced by an uncertain privilege. This contradicts Mr Palmer's "the Government has no intention of restricting the public's right of access to the Queen's Chain".

QUESTION:
Why does the Conservation Law Reform Bill provide powers of closure to public access over the Queen's Chain, especially those strips created under the Land Act to which the public have enjoyed the right of access for over a century, when the Prime Minister said on 28 November last that he has no intention of restricting the public's right of access to the Queen's Chain?

POSSIBLE REPLY
The Conservation Act already has powers of closure over marginal strips; the Bill merely continues such.

SUPPLEMENTARY
There being very few marginal strips (one) in existence and many thousands of 'section 58 strips' that will be affected by the legislative change, why is the right of access under the Land Act being replaced by a mere privilege that represents a restriction of access that the Prime Minister has stated he has no intention of doing?

POSSIBLE REPLY
There is no right of access to 'section 58 strips' under the Land Act.

SUPPLEMENTARY
Is the Prime Minister saying that these strips of land do not exist for the purpose of providing the public with access to waterways? If so for what purpose do 'section 58 strips' currently exist?
Do the public's customary rights of access over the last 140 years count for nothing with this Government?

POSSIBLE REPLY
Powers of closure in emergency and public safety situations are entirely reasonable.

SUPPLEMENTARY
Powers of closure in emergency and public safety situations already lie with the Police, and with fire authorities under the Forests and Rural Fires Act (section 32). Why are these powers being duplicated by the Conservation Law Reform Bill and what are the private assets belonging a manager of a strip that are to be protected by closures of public access?

Question 2

WAIVERING ESTABLISHMENT OF STRIPS

Background

As a result of widespread public condemnation, clauses in the introduced version of the Bill that would have allowed the revocation and disposal of marginal strips were deleted. However a new section has been added to the reported-back version that will allow the Minister of Conservation to waive any requirement to establish marginal strips when any land of the Crown is being disposed of [section 24AA].

The criteria for disposal that Government saw fit to delete from the Bill have been reinstated (the same wording) as the justification for waivering establishment of marginal strips.

An ability to waiver establishment of marginal strips clearly contradicts Mr Palmer's statement that "Government wants the Queen's Chain".

There have been only three instances in the last 15 years where exemptions from the requirement under the Land Act to establish 'section 58 strips' have been exercised through special empowering legislation (Reserves and Other Lands Disposal Bills). If the Government wants the Queen's Chain there is no need to create within the Conservation Act an administrative discretion to waiver establishment of marginal strips. The existing procedure of using R & O L D Bills is satisfactory.

QUESTION

If, as the Prime Minister said in his press release on 28 November last, that the Government want's the Queen's Chain, why has Government acted in such an inconsistent manner as to on the one hand wisely delete provisions for revocation and disposal of marginal strips from the Bill, and then introduce a new section (proposed section 24AA) allowing the Minister of Conservation to declare any lands of the Crown to be exempt from any requirement to establish marginal strips?

POSSIBLE REPLY

The ability to waiver the necessity to establish marginal strips on disposal of Crown lands will only be in exceptional circumstances and in those instances where the strip has little or no value in terms of conservation and the provision of public access or protection can be protected by other means. The proposed Ministerial powers to waiver establishment of marginal strips will be open to challenge through the courts.

SUPPLEMENTARY

Why cannot exemptions from the requirement to establish Queen's Chain, if they are to be few in number as in the past, be provided for by inclusion in annual Reserves and Other Lands Disposal Bills, rather than by creating dangerous new administrative discretions for the Minister of Conservation?

SUPPLEMENTARY

On the matter of challenging Ministerial discretions to waiver the establishment of marginal strips does the Prime Minister not think that this House, and the select committee that examine Reserves and Other Lands Disposal Bills which may contain proposed land sales without provision for the Queen's Chain, would provide a better check on inappropriate Government decisions in the future than by Ministerial decisions notified in the *Gazette* ?

POSSIBLE REPLY

The power to waiver establishment of marginal strips will only be used in situations where a strip would not serve its intended purpose. For instance where there is a cliff that obstructs access along the bank of a waterway.

SUPPLEMENTARY

Section 58 of the Land Act 1948 allows the creation of strips wider than 20 metres, whereas the Conservation Bill will not. Does the Prime Minister see merit in providing for marginal strips to be wider than 20 metres to provide practical access, rather than foregoing the creation of the Queen's Chain?

Question 3

PRIVATE MANAGERS

Background

Currently Queen's Chain strips are either public reserves under central or local government control, or Crown land under the direct jurisdiction of the Department of Conservation. There are no powers to alienate use or management of them to any private interest.

Queen Victoria's instructions to Governor Hobson of 5 December 1840 expressly required "that you do not on any account, or on any pretence whatsoever, grant, convey, or demise to any person...any of the lands so specified...nor permit or suffer any such lands to be occupied by any private person for any private purpose."

No rights of private use or occupation currently exist although most strips are grazed informally by the adjoining land owner on account of the Crown not requiring most strips to be fenced off. Such use is not 'occupation' in the legal sense and adjoining owners have no powers to obstruct public access (although this is occasionally attempted) or to build improvements such as buildings on the strips. There is no ability to gain title by 'adverse possession.' They merely receive free grazing at the pleasure of the Crown.

Administratively this informal system has cost the Government virtually nothing. The mere existence of the strips in the legal sense has been all that has been required for public access to be assured or to be asserted when obstruction occurs.

Government now proposes that the Minister of Conservation may appoint adjoining land owners, or other suitable persons, to be

managers of strips (except in the case of strips around controlled lakes) [section 24G]. The pressure for this has not come from Federated Farmers, but primarily from Landcorp, who have stressed severe managerial/commercial problems for them if the public has free access along waterways 'within' their farm blocks. It is notable that the private farming sector has learnt to live with 'section 58 strips' without the problems Landcorp alleges will arise, and that the same people who are running Landcorp, in their former role as Lands and Survey Department employees, did not raise these problems when they were developing and settling farmers on Crown lands —'section 58 strips' were laid off as a matter of course.

Government has cited supposedly high costs of weed, pest and fire control as reasons for passing such responsibilities on to appointed managers. If such costs were significant Government could alternatively make adjoining landowners/occupiers responsible for weed and pest control in the same manner that applies to landowners adjoining legal roads, without appointing them as 'managers' over the strips. A simple amendment to the Forests and Rural Fires Act could remove marginal strips as 'state areas' for the purposes of the Act.

In brief there is absolutely no necessity for the appointment of private managers over marginal strips. However the risks arising from private control are great. They are to be given the power to make judgements on the public's behalf as to what management best serves the conservation and public access purposes of the strips, to make 'improvements' to the strips, and to request the Minister to close public access "where any operation proposed on the strip will significantly affect public safety or where closure is necessary in any case to protect any asset." [Section 24G (5A)].

The Minister's powers of intervention are limited to the issuing of requirements or restrictions, and to resumption by the Crown. The latter is seriously weakened by the Crown's liability to compensate for the manager's improvements and administration costs. This is likely to be a major disincentive against any Government in the future, except under the most severe public pressure, to ever resume direct control of problem areas. The PLC believes that the appointment of private managers is a one-way street towards privatisation.

To assure unfettered rights of public access the Crown should maintain direct control over all Queen's Chain, in the manner prescribed by Queen Victoria.

QUESTION

If, as the Prime Minister stated in his press release of 28 November last, that it is the Government's intention "to strengthen protection of the Queen's Chain, not the reverse", why does the Conservation Law Reform Bill provide for the appointment of private managers over marginal strips, which are already deemed to be 'specially protected areas' [Conservation Act 1987], with powers to build structures and create other private assets and then request closure of the strips to the public so as to protect such assets?

POSSIBLE REPLY
Adjoining farmers are already in effect the managers of marginal strips; the appointment of them as managers merely recognises the existing situation.

SUPPLEMENTARY
Does the existing situation under the Land Act include powers to develop strips and to seek closure of public access?

POSSIBLE REPLY
The costs of weed, pest and fire control are significant/great for the Crown. It is better to pass these onto the adjoining landowner in return for their use of the strips.

SUPPLEMENTARY
On the matter of costs has Government considered the huge administrative expense to the Department of Conservation of appointing and supervising potentially tens of thousands of individual managers and dealing with public complaints against them, verses the supposed costs of controlling weeds etc?

SUPPLEMENTARY
Could not weed and pest control responsibility be simply passed on to adjoining land owners, in the same manner as applies to legal roads fronting on to private property?